

# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION CONTAMINATED SITES PROGRAM

SARAH PALIN, GOVERNOR

555 Cordova Street  
Anchorage, AK 99501-2617  
Phone: (907) 269-7503  
Fax: (907) 269-7649  
<http://www.dec.state.ak.us/>

File No.: 2100.38.434

Certified Mail No.  
7002 2410 0005 3101 3177

January 17, 2007

Skinner Corporation  
c/o Victoria Childs, Registered Agent  
1326 5th Avenue, Ste. 717  
Seattle, WA 98101

Re: Alaska Real Estate Parking Lot, 717 East 4<sup>th</sup> Avenue, Anchorage, Alaska  
RecKey No. 2004210926001  
Ledger Code 14144960

Dear Ms. Childs:

This letter is to advise you that a contaminated site has been identified at 717 East 4th Avenue, Anchorage, Alaska ("property"). Since you are identified as a current or past owner and/or operator of this site, please be advised you may be financially responsible or liable for the investigation and/or cleanup of any hazardous substance contamination that might be present.

Alaska Statute 46.03.822 establishes who is liable for contamination. Records available to the Alaska Department of Environmental Contamination (ADEC) indicate that you meet one or more of the following criteria:

- owned or controlled the hazardous substance at the time of its release;
- owned or operated the property from which the release occurred;
- owned or operated property at which the hazardous substance came to be located; and/or
- arranged for transport, disposal or treatment of hazardous substances that were released.

In order to better evaluate both your potential responsibility or liability as a former landowner for any hazardous substance contamination, and the potential responsibility or liability of the current owner and operator of the property, ADEC requests that you answer the following questions:

1. Provide your full name and company affiliation (if any).
2. When you owned the property, what building structures, if any, existed on the property?

Rich Sundet  
February 5, 2007  
Page 2

expeditiously as possible, but we may need to review documents that have been archived or stored offsite for decades. Therefore, we respectfully reserve the right to request additional response time, if necessary, beyond the currently requested April 23, 2007 extension.

Thank you for your attention to this matter. As time is of the essence, please contact either me or my colleague, Leslie Clark, at (206) 682-3333 at your earliest convenience.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC



Richard A. Du Bey

Enclosure

cc: Victoria Childs, Skinner Corporation



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- arranged for transport, disposal or treatment of hazardous substances that were released.

In order to better evaluate both your potential responsibility or liability as a former landowner for any hazardous substance contamination, and the potential responsibility or liability of the current owner and operator of the property, ADEC requests that you answer the following questions:

1. Provide your full name and company affiliation (if any).
2. When you owned the property, what building structures, if any, existed on the property?



3. When you acquired the property, did you have any information whatsoever related to the historic use of the property, including information related to any businesses and/or companies that may have owned or operated the property, or leased a portion of the property (please provide ADEC with any documents you have in your possession related to historic operations at the property);
4. Please provide any information you might have with respect to the operation of any dry cleaning establishments on the property;
5. Summarize your activities on the property during ownership of the property. If any hazardous substances were stored or used on site, please describe the circumstances and time frame of storage and/or use.
6. Describe how you acquired the property from Northern Commercial Company.
7. Please provide any information you might have regarding potential or existing contamination on the property, including but not limited to:
  - a. When you first became aware of the existence of any hazardous substance or contamination on the property;
  - b. Whether you were aware of contamination at the property before sale;
  - c. How you became aware of the existence of any hazardous substances or contamination on the property;
  - d. What actions you took after becoming aware of the existence of contamination on the property;
  - e. Please list all site investigations and/or reports that you are aware of related to the contamination at the property (please provide copies of any information related to these investigations and/or reports).

In accordance with Alaska Statute Title 46, ADEC is authorized to provide regulatory oversight for any contamination response efforts initiated by the responsible party. However, if response actions by the responsible party are not satisfactory to ADEC, we may then assume the lead role in the investigation and cleanup efforts. In the event that State response actions are necessary, the responsible parties may be held financially liable for any response actions taken by the State.

Alaska Statute 46.03.760, AS 46.03.822 and 46.08.070 establish cost recovery procedures for certain costs, including oversight activities, incurred by the State in responding to pollution incidents. If you are determined to be a responsible or liable party, ADEC may bill you at a later date for our expenditures associated with this pollution incident. Expenses for which we may seek reimbursement include: staff time associated with general or technical assistance; work plan review; project oversight; general project management; legal services; interest; travel; equipment and supplies; and any contracting costs. Pursuant to AS 46.08.075, the State may also file liens against all property owned by a person who is responsible or liable for State expenditures.



LAW OFFICES

# SHORT CRESSMAN & BURGESS PLLC

DAVID E. BRESKIN  
LESLIE C. CLARK  
MICHAEL J. CRISERA  
JOHN B. CROSETTO  
PAUL J. DAYTON  
RICHARD A. DU BEY  
TATYANA A. GIDIRIMSKI

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CLAUDIA KILBREATH  
RUSSELL S. KING  
ROBERT S. KLEIN  
DAVID R. KOOPMANS  
JANET KIM LIN

999 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98104-4088

FAX: (206) 340-8856

(206) 682-3333

www.scblaw.com

ANDREW W. MARON  
SCOTT M. MISSALL  
SHANE A. MOLONEY  
JAMES A. OLIVER  
CHRISTINE A. POTHERING  
JESSE D. RODMAN  
MICHELLE ULICK ROSENTHAL

JENNIFER L. SANSIRAINT  
ROBERT A. STEWART \*  
JOHN D. SULLIVAN  
JOHN E. WALLACE  
PAUL R. WILLETT  
LISA A. WOLFARD  
\* OF COUNSEL

February 5, 2007

**VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)  
AND FAX TO (907) 269-7649**

Alaska Department of Environmental Conservation  
Attention: Rich Sundet, Environmental Specialist  
555 Cordova Street  
Anchorage, Alaska 99501-2617

Re: *Public Record Disclosure Request*

**RECEIVED**

**FEB 08 2007**

DEPT. OF ENVIRONMENTAL  
CONSERVATION

Dear Mr. Sundet:

We represent the Skinner Corporation, a corporation organized under the laws of the State of Washington. On behalf of Skinner Corporation and in accordance with the provisions governing public record disclosures, AS chapter 40.25 and 2 AAC chapter 96, we respectfully request any and all documents, records, or materials, including electronic or email communications, within the possession, custody, or control of the Alaska Department of Environmental Conservation (ADEC) which refer or relate to the following:

- (1) Property ownership information, analytical data, site investigation logs, site reports, and any other information relating to ADEC's identification of a contaminated site at the Alaska Real Estate Parking Lot, located at 717 East 4<sup>th</sup> Avenue, Anchorage, Alaska (RecKey No. 20044210926001; Ledger Code 14144960) (ADEC File No. 2100.38.434).
- (2) Documents used by or relied upon by ADEC in preparing the enclosed January 17, 2007 letter to the Skinner Corporation regarding the property described above.



Rich Sundet  
February 5, 2007  
Page 2

In accordance with 2 AAC 96.315, we would appreciate your response to this request within ten (10) days. Pursuant to 2 AAC 96.310, we have enclosed a stamped, addressed postcard for prompt acknowledgment of your receipt of this request. If any part of this request is denied, please list the specific exemptions which are claimed for withholding information along with an identification of the records being withheld. Finally, if the cost of responding to this request would exceed \$100, we request that you contact us before responding.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call either my colleague, Leslie Clark, or me at (206) 682-3333.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC



Richard A. Du Bey

Enclosures

cc: Victoria Childs, Skinner Corporation

LAW OFFICES

SHORT CRESSMAN & BURGESS PLLC

2100.38.434

DAVID E. BRESKIN  
LESLIE C. CLARK  
MICHAEL J. CRISERA  
JOHN B. CROSETTO  
PAUL J. DAYTON  
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LISA A. WOLFARD  
★ OF COUNSEL

February 5, 2007

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)  
AND FAX TO (907) 269-7649

Alaska Department of Environmental Conservation  
Rich Sundet, Environmental Specialist  
555 Cordova Street  
Anchorage, Alaska 99501-2617

RECEIVED

FEB 08 2007

DEPT. OF ENVIRONMENTAL  
CONSERVATION

Re: ADEC File No. 2100.38.434; Extension of 30-day response deadline until  
April 23, 2007

Dear Mr. Sundet:

We represent the Skinner Corporation, a corporation organized under the laws of the State of Washington. We are in receipt of the enclosed Alaska Department of Environmental Conservation (ADEC) January 17, 2007 letter, regarding certain allegations concerning contamination at a site identified as the Alaska Real Estate Parking Lot (owned by Alaska Real Estate, Inc.), located at 717 East 4<sup>th</sup> Avenue, Anchorage (RecKey No. 2004210926001; Ledger Code 14144960) (the Property). The ADEC letter requests a response from the Skinner Corporation within 30 days of its receipt, which occurred on or about January 22, 2007. We write to respectfully request that you extend this deadline by 60 days, setting a revised deadline of April 23, 2007.

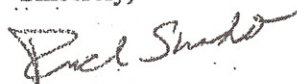
As you know, ADEC's January 17<sup>th</sup> letter requests detailed information including the history of ownership and control of the Property, the use of and activities on the Property, and any knowledge of potential or existing contamination on the Property. Although Skinner Corporation is not a responsible or a liable party under either Alaska or other applicable law, we intend to provide ADEC with a full and complete response to the ADEC January 17<sup>th</sup> letter. Toward that end, we will require additional time to review and compile relevant information dating back at least 60 years. We intend to respond as



January 17, 2007

Please provide written responses to the above questions within 30 days of receipt of this letter. If you are willing and able to undertake response actions in accordance with 18 AAC 75.300 - .396, or if you believe someone else may be responsible for this pollution incident, please contact Rich Sundet at (907) 269-7578, the ADEC Project Manager for this pollution incident.

Sincerely,



Rich Sundet  
Environmental Specialist

CC: Jim Frechione, Private Sites Program Manager, CS / Fairbanks  
Veris Lunasin, Accountant, SPAR / Juneau  
Jenn Currie, Dept. of Law / Anchorage  
John J. Houlihan, Jr., Short, Cressman & Burgess PLLC.



# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION CONTAMINATED SITES PROGRAM

SARAH PALIN, GOVERNOR

555 Cordova Street  
Anchorage, AK 99501-2617  
Phone: (907) 269-7503  
Fax: (907) 269-7649  
<http://www.dec.state.ak.us/>

File No.: 2100.38.434

February 6, 2007

Skinner Corporation  
c/o Victoria Childs, Registered Agent  
1326 5th Avenue, Ste. 717  
Seattle, WA 98101

Re: Alaska Real Estate Parking Lot, 717 East 4<sup>th</sup> Avenue, Anchorage, Alaska  
RecKey No. 2004210926001

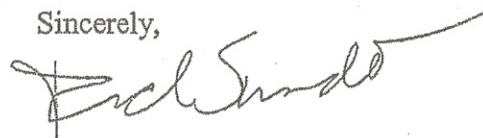
Dear Ms. Childs:

This letter is in response to your request for a 60 day extension to provide information requested in our January 17, 2006 letter to you. Your request was made through your legal counsel Short Chessman & Burgess PLLC dated February 5, 2007. We received the request via facsimile on February 5. The basis for the request is that much of the information that we requested has been archived and stored off site. The Department of Environmental Conservation (ADEC) grants your request until April 23, 2007 to provide us the information stated in our January 17<sup>th</sup> letter.

In addition, ADEC has received via facsimile on February 5, 2006, a public information request regarding this property. We will be coordinating with Ms. Leslie Clark or Richard Du Bey of Short Chessman & Burgess PLLC to provide the information you requested.

If you have any further questions, please contact me at (907) 269-7578.

Sincerely,



Rich Sundet  
Environmental Specialist

cc: Jenn Currie, Dept. of Law / Anchorage  
John J. Houlihan, Jr., Short, Cressman & Burgess PLLC, Seattle, WA (by mail and facsimile)

Aggie Blandford  
February 13, 2007  
Page 2

Sincerely,

SHORT CRESSMAN & BURGESS PLLC



Richard A. Du Bey

Enclosures

cc: Victoria Childs, Skinner Corporation  
Rich Sundet, Alaska Department of Environmental Conservation ✓

LAW OFFICES

# SHORT CRESSMAN & BURGESS PLLC

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JOHN E. WALLACE  
PAUL R. WILLETT  
LISA A. WOLFARD  
\* OF COUNSEL

February 13, 2007

*Via PDF to Aggie Blandford@dec.state.ak.us and First Class Mail*

Alaska Department of Environmental Conservation  
Attention: Aggie Blandford  
555 Cordova Street  
Anchorage, Alaska 99501-2617

Re: *Public Record Disclosure Request; Certification*

Dear Ms. Blandford:

We represent the Skinner Corporation, a Washington State corporation which, on January 17, 2007, received the enclosed letter from the Alaska Department of Environmental Conservation (ADEC) notifying Skinner Corporation that it may be a potentially liable or responsible party regarding alleged contamination at a property known as the Alaska Real Estate Parking Lot, 717 East Fourth Avenue, Anchorage (the Property).

Thereafter, on February 5, 2007, in accordance with applicable Alaska State law, we submitted the enclosed public records disclosure request for ADEC's records on the Property.

In response to our February 5<sup>th</sup> disclosure request, we received the enclosed Certification of Nonlitigation Affiliation. By this letter, we wish to advise ADEC that, other than for Skinner Corporation's response to ADEC's January 17<sup>th</sup> letter, Skinner Corporation is not currently involved in any litigation with the State of Alaska.

Upon your receipt of this letter, please contact either my colleague, Leslie Clark, or me at (206) 682-3333, to confirm that ADEC will promptly provide us with the requested records. We have previously remitted the \$19.50 requested by ADEC for the copying and shipping of the records.

**RECEIVED**

**FEB 16 2007**

DEPT. OF ENVIRONMENTAL  
CONSERVATION



## Blandford, Aggie

---

**From:** Blandford, Aggie  
**Sent:** Friday, February 23, 2007 1:32 PM  
**To:** 'Lisa Hensley'  
**Cc:** vsc@skinnercorp.com; Richard Du Bey; Sundet, Rich  
**Subject:** RE: Public Record Disclosure Request; Certification

Ms. Hensley

Thank you for submitting the certificate of non-litigation letter in reference to the Skinner Corporation. ADEC received payment for the copy fees in the amount of \$19.50. The records were sent to Short Cressman & Burgess on February 16, 2007.

Please let me know if Mr. Du Bey should need any further assistance.

-Aggie Blandford

-----Original Message-----

**From:** Lisa Hensley [mailto:LHENSLEY@scblaw.com]  
**Sent:** Tuesday, February 13, 2007 3:09 PM  
**To:** Blandford, Aggie  
**Cc:** vsc@skinnercorp.com; Richard Du Bey  
**Subject:** Public Record Disclosure Request; Certification

Please see attached letter and enclosures from Mr. Du Bey. Thank you.

Sincerely,

Lisa Hensley  
Assistant to Richard A. Du Bey  
Short Cressman & Burgess  
999 Third Avenue, Suite 3000  
Seattle, WA 98104  
(206) 682-3333

-----  
This mailbox protected from junk email by MailFrontier Desktop from MailFrontier, Inc.  
<http://info.mailfrontier.com>

-----Original Message-----

**From:** ecopy  
**Sent:** Tuesday, February 13, 2007 4:00 PM  
**To:** Lisa Hensley  
**Subject:** Scanned document <11 pages ~269 KB> -- 2/13/2007 3:59:45 PM

This PDF file was created using the eCopy Suite of products. For more information about how you can eCopy paper documents and distribute them by email please visit <http://www.ecopy.com> <<SFX9E7.pdf>>

January 17, 2007

Please provide written responses to the above questions within 30 days of receipt of this letter. If you are willing and able to undertake response actions in accordance with 18 AAC 75.300 - .396, or if you believe someone else may be responsible for this pollution incident, please contact Rich Sundet at (907) 269-7578, the ADEC Project Manager for this pollution incident.

Sincerely,



Rich Sundet  
Environmental Specialist

CC: Jim Frechione, Private Sites Program Manager, CS / Fairbanks  
Veris Lunasin, Accountant, SPAR / Juneau  
Jenn Currie, Dept. of Law / Anchorage  
John J. Houlihan, Jr., Short, Cressman & Burgess PLLC.

LAWRENCE V. ALBERT

ATTORNEY AT LAW

P. O. BOX 200934

ANCHORAGE, ALASKA 99520

TELEPHONE (907) 243-2172

FAX (907) 243-5476

September 15, 2006

Jennifer Currie, Esq.

~~Assistant Attorney General~~

Alaska Dept. of Law

1031 W. Fourth Ave. Ste. 200

Anchorage, Alaska 99501

Re: Fourth Avenue Gambell Limited Partnership Site Contamination

Dear Ms. Currie:

This letter updates my letter of July 21, 2006, concerning the above referenced matter. Since then, I have reviewed all of the client's files along with Robert Erwin's files pertaining to the Fourth Avenue Gambell property and the limited partnership ("LP") which owns the property. I have also obtained from the Washington Secretary of State all pertinent filings for three Washington corporations of interest in this matter.

Enclosed is a loose compilation of documents comprising client correspondence; Washington corporation filings; a tabulation of LP response costs, and a Table of Interlocking Officers and Directors-Washington Corporations. This information is offered pursuant to our informal agreement to share information concerning potential PRP's for the property.

The remainder of this letter provides an update to my inferences regarding corporate ownership and involvement circa 1950 through 1994 for the three corporations Northern Commercial Company ("NCC"), NC Machinery and Skinner Corporation. This update follows the format and contents of pages 8-9 of my July 21, 2006 letter:

1. NCC was formed as a Delaware corporation and conducted business in Alaska from the early days of the Alaska Territory. I have a records request in to the Delaware Secretary of State regarding any historical filings for NCC through 1978, when its corporate status in that state evidently ceased. See below.



2. NCC formed NC Machinery as part of its Alaskan business and entered into a sales relationship with Caterpillar Tractor in 1926. This business relationship continued, on information and belief, at all times pertinent to the inquiry on this matter.

3. NC Machinery Co. was incorporated in the State of Washington in 1959 and continued its corporate status in that state through July 2004. Ownership of NC Machinery is unknown. From the period of its formation in 1959 through sale in 1974/1976, NCC apparently owned NC Machinery Co. Interestingly, NC Machinery was never registered as a foreign corporation authorized to do business in Alaska prior to 2000.

4. Northern Commercial sold its Alaska machinery and equipment division, d/b/a NC Machinery Co. to Skinner Corporation in 1974 or 1976. Evidence for this transaction are articles on the Internet and Petroleum News regarding sale of the NC Machinery business in 1974 to Skinner. You have separately indicated that Skinner represented to the Alaska Corporations Section its intention to purchase the business in 1976.

Whether the sale was memorialized in transfer of the Washington corporation NC Machinery Co. is unknown. On information and belief, NCC transferred stock ownership and all other indicia of corporate ownership for both itself as a Delaware corporation, and NC Machinery Co. as a Washington corporation, to Skinner Corporation sometime prior to September 1978.

5. On July 20, 1978, Articles of Incorporation for NC Washington Corporation were filed with the Washington Secretary of State. Included among the initial list of Directors for the new corporation was D.E. Skinner. D.E. Skinner appears as President of the Skinner Corporation from 1962 through 1979. See attached Table of Interlocking Officers and Directors-Washington Corporations.

6. Within two months, Articles of Merger were filed with the Washington Secretary of State on September 29, 1978. The Articles recite that Northern Commercial Company, a Delaware corporation, was being merged with NC Washington Corporation, that the merged entity would become the Washington corporation, and that the corporate name for the merged entity was amended to be Northern Commercial Company, a Washington corporation.

Attached with the Articles of Merger are Articles of Incorporation for Northern Commercial Company. The initial Directors were identified as D.E. Skinner, Robert



Behnke, and Arthur Nordoff. As noted above D.E. Skinner was a long-standing officer of the Skinner Corporation. Also, Robert Behnke through putative blood or marital relationship to Carl Behnke, shows a presence as Director for NCC, NC Machinery and Skinner Corporation in the period 1991 through 1994. Similarly Nancy Nordoff, as putative spouse or family member shows as Director of NCC in 1992 through 1994.

7. The State of Washington evidently did not require annual or biennial reports by corporations prior to 1993. Commencing in that year, it appears that the Corporate License Renewal/Annual Report for NCC, NC Machinery and Skinner show interlocking officers or directors. See attached Table of Interlocking Officers and Directors-Washington Corporations.

8. On information and belief, Skinner Corporation sold the NC Machinery business in December 1993, to the Harnish Group, d/b/a Tractor and Equipment Co., a Montana corporation. The Tractor and Equipment Company's website reported on the NC Machinery business acquisition for Caterpillar product sales in Alaska and Washington in 1993. Evidence for this transfer of ownership appears in corporate filings for NC Machinery in 1994. See below.

9. On January 3, 1994, Articles of Amendment for NCC were filed with the Washington Secretary of State. These Articles state the corporate name was being changed to SC Distribution Co. To authorize this transaction, a Consent of Shareholders in Lieu of Special Meeting of Northern Commercial Company was executed on December 30, 1993. This document states that Skinner Corporation was the sole shareholder of NCC.

In my July 21, 2006, letter I erroneously stated that SC Distribution Co. had been formed in 1978. This is based upon an erroneous interpretation of the Washington Secretary of State's certification of corporate records for SC Distribution Co. That certificate recites that SC Distribution Co was formed on July 28, 1978. Having reviewed all the corporate filings for the three Washington corporations, I now understand that NC Washington Corporation was formed on July 28, 1978, its name was changed to Northern Commercial Company on September 29, 1978, and changed once again on January 3, 1994, as SC Distribution Co.

10. On July 27 and 28, 1994, identical Articles of Dissolution for NCC and NC Machinery Co. were filed with the Washington Secretary of State. The Articles show a common signature block of "SC Distribution Co., by Gerhardt Morrison, Vice President." Such a signature block in representative capacity would be correct for NCC's Articles of



Dissolution, since that corporation's name had been changed to SC Distribution Co.

However, NC Machinery maintained separate corporate existence with the Washington Secretary of State at least through its 1993 Corporate License Renewal. The appearance of the identical signature block "SC Distribution Co., by Gerhardt Morrison, Vice President" for NC Machinery's Articles of Dissolution was probably a drafting error (because the documents were otherwise identical and were drafted off a template). This drafting error provides telling evidence that SC Distribution Co., f/k/a Northern Commercial Company and NC Machinery were one and the same; were commonly owned by the Skinner Corporation on December 1993, and that SC Distribution Co. was merely a liquidation vehicle.

11. Also on July 27, 1994, new Articles of Incorporation for NC Machinery Co., Inc. were filed with the Washington Secretary of State. The Articles show Edward Kuhrau as Incorporator; and that Kuhrau appeared in a representative capacity as Lawco, Registered Agent for the corporation. The Articles are otherwise unrevealing as to ownership or directors.

The Corporate License Renewals for NC Machinery Co., Inc., in 1994 and 1995 show John Harnish as the President, Secretary and Director of the corporation. No other names appear. In 2000, NC Machinery Co., Inc. received authorization to conduct business as a foreign corporation in Alaska. Its Application for Certificate of Authority filed in 2000 indicates that Harnish Group, Inc. was the 100% shareholder of NC Machinery Co., and that NC Machinery Co. was organized as a domestic corporation in Washington on June 27, 2004.

The fact that NC Machinery Co. voluntarily dissolved on July 27, 1994, and a new corporation was formed on the same date by the Washington Secretary of State provides circumstantial evidence of a transfer of corporate ownership. Other than for possible tax or estate planning purposes, no other legitimate reason would be served by dissolving a corporation and forming a new successor entity with the same name on the same date.

\*\*\*\*\*

My overall opinion regarding the PRP status of Skinner Corporation has not changed since my July 21, 2006, letter. The records of the Washington Secretary of State and analysis of the three Washington corporations suggests a pattern of common ownership and management. Unfortunately, the available corporate records are not continuous, do not show complete officer/director listings, and do not reveal shareholder information.



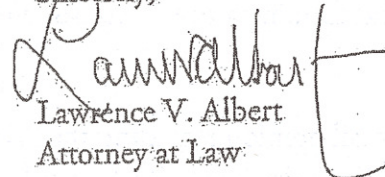
JENNIFER CURRIE, ESQ., ALASKA DEPT. OF LAW  
Re: Fourth Avenue Gambell Site Contamination

If the Alaska Department of Law inquires with the Skinner Corporation regarding its ownership and/or management of the Fourth Avenue Gambell property, along with disposition of the 1979 promissory note and deed of trust, it should request records on the following matters:

1. Skinner Corporation purchase of assets, corporate ownership, or both, of Northern Commercial Co. and NC Machinery circa 1974 to 1976.
2. Skinner Corporation stock ownership of NC Washington Corporation, Northern Commercial Co., NC Machinery and SC Distribution Co. during their corporate existence in the State of Washington through July 27, 1994.
3. Skinner Corporation management of Northern Commercial Company and NC Machinery during its period of ownership circa 1974-76 through 1994.
4. Skinner Corporation sale of NC Machinery Co. assets, corporate ownership, or both, in 1993 or 1994.
5. Management of Northern Commercial Co., NC Machinery, or both, by Skinner Corporation during its period of ownership.
6. Consideration received for transfer of 1979 promissory note and deed of trust from Northern Commercial Corporation to Skinner Corporation, according to 2001 Assignment of Deed of Trust recorded in Anchorage Recording District.

I appreciate that the above topics are comprehensive and the Alaska Department of Law may choose to restrict its inquiry. I would certainly pursue discovery on the above if litigation ensues. Please feel free to contact me if you have any questions regarding this letter or the above matter.

Sincerely,

  
Lawrence V. Albert  
Attorney at Law

encls

cc: Paul Maney

Robert Erwin, Esq. (w/o encls)

LAWRENCE V. ALBERT

ATTORNEY AT LAW

P. O. BOX 200934

ANCHORAGE, ALASKA 99520

TELEPHONE (907) 243-2172

FAX (907) 243-5476

July 21, 2006

Jennifer Currie, Esq.  
Assistant Attorney General  
Alaska Dept. of Law  
1031 W. Fourth Ave. Ste. 200  
Anchorage, Alaska 99501

Re: Fourth Avenue Gambell Limited Partnership Site Contamination

Dear Ms. Currie:

I appreciate talking with you on the telephone earlier this week regarding the above matter. Mr. Paul Maney, general partner of the limited partnership ("LP") has retained me to represent the property owner on hazardous substances matters. I have met with Robert Erwin, prior counsel, and Robert Braunstein of BGES, Inc., the hazardous substances remediation consultant. I am in the process of collecting information from them.

While I am new to this matter, I have substantial experience in hazardous substances law and dealing with contaminated sites. During our telephone conversation, we compared our respective understanding of factual information regarding property history, corporate ownership, correspondence between the present and past owners and current site investigation efforts.

I would be glad to share with you any non privileged information I obtain regarding this site. My client's goal is developing an acceptable remediation strategy and compliance status which will hopefully realize equity for the limited partnership and result in successful marketing of the property. Following are my initial thoughts on solving the contamination problem along with a summary of pertinent information. Any statements made herein are preliminary pending the compilation of additional information.



A. *Information on Site Contamination.*

The following reports have been prepared on the property:

EnviroAmerica, Inc., Environmental Assessment--Final Report: The Fourth Avenue Gambell, Anchorage Alaska, Jan. 29, 1993;

EPMI, Inc., Initial Site Characterization and Subsurface Investigation Report--4th and Gambell, Anchorage, Alaska, prepared for Skinner Corporation, Dec. 1997 (draft copy);

BGES, Inc., Lots 8A, 10, 11 and 12, Block 26A, East Addition, Anchorage, Phase II Environmental Site Assessment, Anchorage Alaska, September 2004; and

BGES, Inc., Fourth Avenue and Gambell Street, Anchorage, Alaska, Phase II Environmental Site Assessment, May 2005.

In September 2004, BGES on behalf of the LP noticed a release of contaminants and requested DEC permission to transport and dispose of excavated soils which contained contaminants exceeding clean-up criteria. DEC granted permission for the soils disposal. DEC has issued no demand for corrective action to any potentially responsible parties ("PRP"). DEC did write a letter to the LP dated June 7, 2006, asking a series of questions about property history and Robert Erwin replied via letter dated on July 10, 2006.

Through Robert Erwin, I gather the 1997 EPMI report was only recently made available to the LP. Erwin indicates he made repeated demands for the report over the years. In fact, the LP contributed \$5,000 towards the cost of the report back in 1997. I am not clear why the Skinner Corporation refused to provide the report. My limited understanding is that a dispute persisted between 1993 and 2004, approximately, regarding the LP's liability on the note versus Skinner's assertion of a security interest exemption under hazardous substances law. These two issues apparently motivated Skinner against releasing the 1997 report until recently.

B. *Source and Characterization of Site Contamination.*

The contamination on the property consists principally of hydrocarbon products and tetrachloroethylene ("PCE"). The available information suggests that both the hydrocarbon and PCE releases occurred from prior businesses on the premises. We know that NC



Machinery had a retail operation, apparently located on Lots 10-12 within the property. NC Machinery apparently conducted business as NC Auto Service Center with a street address of 735 Fourth Avenue. We also know that one or more cleaners operated on the western portion of the property (Lot 8A) from the period of 1957 through 1967 at least.

The NC Auto Services Center closed at some point because the building on the property was demolished according to a demolition permit issued in 1978. When the LP purchased the property in March 1979, the site was vacant and unimproved. It has remained in that condition to the present. In the last few years, the site has been used as a parking lot but the ground remains unpaved and no improvements have been made for the parking lot use.

The 1997 site investigations discovered the presence of 10 hydraulic hoists (also described as cylinders) on Lots 10-12. Two underground storage tanks were discovered on Lots 10-12. The 1997 site investigation excavated and exposed this equipment sub-surface and sampled soils in vicinity of the equipment. However, EPMI apparently did not remove or dispose of the tanks or hoists and instead re-buried them. EPMI did apparently dispose of four excavated manufacturers' drums noted for dry cleaning use. These were empty upon discovery by EPMI in 1997.

The 1997 site investigation disclosed a sump/crib wastewater disposal facility in proximity to each of the buildings. The sump/cribs evidently functioned to drain liquid wastes on site without any disposal to drums or other containers. Although neither consultant (EPMI, BGES) has offered an opinion on the matter, it would appear that the sump/cribs provided the mechanism for release of both hydrocarbon and tetrachloroethylene wastes. Leaking UST's would also be a mechanism for release of hydrocarbon products.

The 1997 site investigation tested surface soils to be positive for hydrocarbon contamination. The 1997 site investigation also sunk three monitoring wells and these tested positive for PCE contamination, with the highest reading at 4,250 ppb. The Idaho consultant made no mention that PCE is a suspected carcinogen and that PCE releases in groundwaters could pose a risk to public health and safety if drinking waters in the area were affected.

The BGES 2004 site investigation yielded the first subsurface reconnaissance of the property for the LP. The consultant dug six test pits throughout the property ranging from 13-16 feet in depth. BGES also excavated in the area of the former NC Auto Services Center, located two heating oil UST's, two hydraulic oil UST's and five hydraulic lifts in that



area along with structural concrete. All of this equipment was removed and disposed of, including the structural concrete, piping and other fixtures associated with former NC operation.

BGES identified soils contamination in the areas of excavation by field measurement, removed and stockpiled the contaminated soils and received DEC permission for disposal of same. Through subsequent laboratory testing, BGES determined that soils remaining in the excavated areas still exceeded DEC clean-up levels at certain locations. A further description of the location and parameters of soils contamination is available in the BGES 2004 report. BGES recognized in the conclusion to its 2004 report that not all contaminated soils on the property had been removed.

BGES' 2005 investigation addressed the PCE contamination. The consultant did three borings and sunk monitoring wells at the same location. The borings and monitoring wells were located in proximity to the building site occupying the dry cleaners (western end of property, Lot 8A). BGES found PCE in groundwaters ranging between 70 and 1,790 micrograms per liter whereas the DEC clean-up level is 5 micrograms per liter. Soils concentration of PCE at various depths to 40 feet below grade were also elevated at several thousand parts per billion whereas the soils clean up level is presumptively 30 parts per billion.

The BGES 2005 report is subject to a reading that PCE groundwater contamination may be confined to the watertable, which lies above a confining layer of clay. The water table at the three well locations was measured at 41 to 45 feet below grade with an inferred gradient in the northeast direction (towards Ship Creek); the clay layer was encountered at 45 to 50 feet at the same locations. Presumably, further site investigation would be appropriate to adequately characterize the groundwater plume and whether it extends off-premises. See below.

C. *Property History.*

A Property History Report has been procured from Pacific Northwest Title of Alaska (copy enclosed). The property comprises four lots. The western lot derives from a 1964 plat (Lot 8A, Block 26A, East Addition to Townsite of Anchorage, according to Plat 64-100). The three eastern lots derive from a 1949 plat (Lots 10-12, Block 26A, East Addition to Townsite of Anchorage, according to Plat C-18).



The Property History Report is not a title abstract in the sense that all recordings affecting the lots in question have not been compiled and abstracted. As I understand the product provided by the title company, only conveyances have been compiled. Although these categories substantially overlap, a complete title abstract could be more informative for purposes of ascertaining "owner or operator" status under hazardous substances law.

For example, the Property History Report does not disclose the Assignment of Deed of Trust and Deed of Reconveyance recorded on August 4, 2004 (copy enclosed). The Assignment of Deed of Trust identifies SC Distribution Co as successor in interest to Northern Commercial Co, that SC Distribution Co. is a dissolved Washington corporation, and that SC Distribution Co. assigned its beneficial interest in the deed of trust to Skinner Corporation, also a Washington corporation. The Deed of Reconveyance to Fourth Avenue Gambell was executed by Victoria Childs as Treasurer to the Skinner Corporation.

The Property History Report indicates that Northern Commercial Co., a Delaware corporation, vested title in Lots 10-12 through warranty deed recorded in 1947. The grantors were Fred Wagar and Mary Rattray, doing business as Anchorage Motors. It is not known whether Anchorage Motors had any buildings or retail business on the lots sold in 1947. Air photo coverage for Anchorage apparently goes back to 1950. Northern Commercial Co. stayed in title to Lots 10-12 through the vesting deed to Fourth Avenue Gambell on March 1979.

The Property History Report discloses leases on former Lots 7 and 8, Block 26A, commencing in 1957 and continuing through 1964. The 1957 lease shows the lessor as Stefanja Anderson and the lessee as Peacock Cleaners, Inc. The 1964 lease shows the same lessor and three lessees, Lloyd Conners, Frank Klith, and C & K Sanitary Cleaners, Inc. This lease went into default within months and was replaced by a successor lessee, Sterling Bell. Northern Commercial Co. vested title to replatted Lot 8A through Administratrix's Deed from the Estate of Stefanja Anderson recorded in 1971. Northern Commercial Co. then conveyed Lot 8A to Fourth Avenue Gambell on March 1979.

D. *Historical Business Activity and Land Use for Property.*

Aerial photography taken in 1960 and included in the 2005 BGES report shows two buildings on the property. One building is located on Lot 8A and another building is located commonly on Lots 10-12. According to the 1973 EnviroAmerica report, a demolition permit was obtained from the City of Anchorage in 1978 and the buildings were demolished. Thus at the time of purchase in 1979, the property appears to have been cleared



JENNIFER CURRIE, ESQ., ALASKA DEPT. OF LAW  
Re: Fourth Avenue Gambell LP Site Contamination.

of any structures or improvements. Aerial photography for 1970 shows no building on Lot 8A, hence any dry cleaning establishment with such building ceased and Northern Commercial Co. came into title to Lot 8A presumably after PCE releases associated with dry cleaning operations.

Additional evidence of historical business use, if such records are kept and are still maintained, would include telephone books, property tax assessments, business licenses, personal property tax or sales tax assessments, and any zoning, building or permitting for the property. The 2005 BGES report summarizes address listings for the property from the Polk commercial directory for years 1965 through 1977. No active listings were present for 1979 or 1980.

It appears to be common knowledge among older Anchorage residents that Northern Commercial had a retail business on the property. The Polk commercial directory identifies the business as the NC Auto Services Center. The Polk commercial directory also identifies C & K Sanitary Cleaners as having an address on the property during years 1986-70. Recall that the Property History Report shows a 1964 recorded lease to C & K Sanitary Cleaners.

E. *Northern Commercial Co. and Successor Corporate Relationships.*

Tracking the evolution of management or corporate ownership of the businesses operating on the property is relevant to ascertaining PRP's under hazardous substances law.

I have undertaken a reconnaissance of online corporation databases and Googled the Internet to compile information about the following corporations: Northern Commercial Co., NC Machinery, SC Distribution Co., Skinner Corporation, and Tractor & Equipment Co. Following my online searches, I have written to the Alaska Corporations Section and the Washington Secretary of State requesting complete files on these corporations (copy enclosed). I glean the following regarding the corporate entities:

Northern Commercial Company was originally organized as a Delaware corporation and had a long standing role in territorial Alaska. Northern Commercial operated both general stores in bush Alaska and retail stores in the cities. Early in its history, Northern Commercial formed the business "NC Machinery." A historical reprise of business indicates that Northern Commercial originally established a sales and service agreement with



Caterpillar in 1926.<sup>1</sup>

Inquiry with the Alaska Corporations Section shows that NC Machinery was not a separately organized corporation under Alaska law until 2000. However, the Washington Secretary of State shows two separate filings for NC Machinery, Inc. The first corporation was organized in 1959 and its registration expired in 1994 (UBI 601 558 748). The second corporation was organized in 1994 and is active under Washington law (UBI 601 423 215).

Two separate Internet postings recite that Northern Commercial sold its machinery business in 1974. One such posting recites "By 1974, the Company was being sold again. It was divided up into three companies. . . . The equipment and machinery division was sold to the Skinner Corporation of Seattle."<sup>2</sup>

Skinner Corporation is a long standing Washington corporation organized in 1916. According to online postings, the company had diversified holdings and operations in shipping, trade and real estate. Today, Skinner appears to be an investment and real estate holding company and is prominent in Seattle. Skinner has evidently never been authorized as a foreign corporation in Alaska. Skinner looks like it has deep pockets.

Interestingly, two separate letters concerning the 1979 property sale identify NC Machinery rather than Northern Commercial Co. as the note holder. In a 1993 letter to Robert Erwin on NC Machinery letterhead, an attorney repeatedly referred to the note holder as NC Machinery and made no reference to Northern Commercial Co. Later in 2004, an attorney for Skinner Corporation stated "[i]n 1994, NC Machinery was dissolved and the note and deed of trust were assigned to the Skinner Corporation." This letter is also silent on the original note holder being Northern Commercial Co. rather than NC Machinery.

NC Machinery continues in business today. However, NC's current corporate ownership may or may not be connected with Skinner Corporation. It appears that a

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<sup>1</sup> See "NC Machinery Celebrates 75 Years as Caterpillar Dealer," available at <http://www.petroleumnews.com/pntruncate/437751774.shtml> (last visited July 13, 2006).

<sup>2</sup> See "the Unique and Proud History of Alaska Commercial Company," available at <http://www.alaskacommercial.com/AboutAC/AboutAC.html> (last visited July 13, 2006), copy enclosed.



Montana Corporation known as Tractor & Equipment, Inc. acquired the rights to the Caterpillar equipment distribution in Alaska from NC Machinery Co effective December 30, 1993. Skinner Corporation may have sold its NC Machinery business to Tractor & Equipment Co. Whether such sale, if one occurred, coincides with shareholder ownership of NC Machinery, Inc. as a Washington corporation is unknown. Coincidentally, records of the Washington Secretary of State indicate the first NC Machinery business incorporated in that state expired in 1994, while a new corporation was also formed in 1994 with the same name.

From the above limited information I infer on the following:

1. Northern Commercial Co. formed as a Delaware corporation and conducted business in Alaska from the early days of the Alaska Territory. Northern Commercial formed NC Machinery as part of its Alaskan business and entered into a sales relationship with Caterpillar Tractor in 1926. Northern Commercial later incorporated NC Machinery as a Washington corporation in 1959 and was its sole shareholder.
2. Northern Commercial bought Lots 10-12 in 1947, constructed one or more buildings thereon at some subsequent date(s), and operated a business on the property. During the 1970's, the business operated as the NC Auto Services Center. Northern Commercial purchased Lot 8A in 1971. One or more dry cleaners occupied a building located on Lot 8A from the period 1957 through 1968. Thereafter, the building was demolished as a 1970 aerial photograph shows Lot 8A vacant.
3. Northern Commercial sold its Alaska machinery and equipment division, d/b/a NC Machinery to Skinner Corporation in 1974. Whether the sale was memorialized in transfer of the Washington corporation NC Machinery, Inc. is unknown. Certainly, the title to Lots 8A and 10-12 comprising the subject property were not transferred and remained vested in Northern Commercial Co.
4. Northern Commercial Co. sold the subject property to Fourth Avenue Gambell in March 1979. The sale was financed by a note and deed of trust. The note was made to Northern Commercial Co., identified as a Washington corporation. The deed of trust beneficiary was Northern Commercial Co., identified as a Delaware corporation. The discrepancy in corporate status for Northern Commercial may have been a drafting error. No formal endorsement of the note and assignment of the deed of trust from Northern Commercial Co. to NC Machinery, Inc. occurred because the 1993 shareholder's consent assigned the paper directly from Northern Commercial Co. to Skinner Corporation.



5. From 1974 through 1993, Skinner Corporation held the beneficial interest in all Alaskan assets associated with NC Machinery that it acquired from Northern Commercial. The Northern Commercial/NC Machinery assets in Alaska may or may not have been managed independently from the Skinner Corporation. I have not compiled any information on this subject.

6. In 1978, Skinner Corporation created a subsidiary known as SC Distribution Co. SC Distribution Co. was organized as a Washington corporation and was subsequently dissolved on July 31, 1994. SC Distribution Co may have been a vehicle for liquidation of Skinner corporate assets. There is no evidence of any relationship between SC Distribution Co. and either Northern Commercial or NC Machinery prior to December 30, 1993.

7. On December 30, 1993, Skinner Corporation through shareholder's consent transformed its ownership of Northern Commercial Co., into SC Distribution Co. (through amendment of the articles of incorporation) and then assigned the Deed of Trust to Skinner Corporation. This transaction is puzzling because online records of the Washington Secretary of State indicate that SC Distribution Co. was already organized as a domestic corporation since 1978.

Perhaps Skinner was endeavoring a merger of the defunct Northern Commercial Co. with its subsidiary, SC Distribution Co. Within the next six months of the December 1993 transaction, SC Distribution Co. itself was dissolved as a Washington corporation. Because Northern Commercial was advised of property contamination by December 1993, Skinner's transfer of corporate ownership and commercial paper concerning the subject property through one or more corporate vehicles appears suspicious.

8. Also in December 1993, Skinner Corporation sold either its Caterpillar dealership in Alaska and/or the NC Machinery, Inc. corporate assets to Tractor & Equipment, Inc., a Montana corporation.

F. *The LP's Status under Alaska Hazardous Substances Law.*

Fourth Avenue Gambell is the owner of real property on which the release of one or more hazardous substances has occurred under Alaska law. Under CERCLA, Fourth Avenue Gambell would be a PRP. Under Alaska law, however, the LP may not be liable for response costs because the historical releases of contaminants occurred prior to its ownership. The Alaska Supreme Court has noted in dictum that "Alaska's law appears to focus on the owner at the time of the release, rather than on subsequent owners." *FDIC v. Laidlaw Transit, Inc.*,



21 P.3d 344, 349 n.19 (Alaska 2001).

I am not aware of *Laidlaw's* dictum having been subsequently applied in a decision of the Alaska courts. Also, I am not aware that DEC has adopted *Laidlaw's* interpretation of Alaska hazardous substances law. Practically speaking, it may not make a difference whether the LP is immune from liability under Alaska's hazardous substances law because the market imposes its own rules on sale of contaminated property.

From my experience dealing with contaminated property, the market reality is that the Fourth Avenue Gambell property will have to be cleaned up or otherwise rendered in compliance with hazardous substances law such that a prospective purchaser acquires no liability upon vesting of title. The LP is therefore motivated to render its property marketable if it is to realize any equity on its investment.

With this agenda in mind, Fourth Avenue Gambell seeks guidance from DEC on what further site investigation and remediation will be necessary to bring the property into compliance for marketing purposes. We suspect that further site investigation of the PCE will be necessary to adequately characterize the extent of the contamination, migratory paths and amenability to treatment options. Thereafter, we will be interested in a remediation plan or options to be prepared by BGES. The possibility of a risk assessment and/or DEC decision that tolerates a modicum of contamination as a condition of title would be of interest to the LP.

Paul Maney representing the LP and Bob Braunstein of BGES have met with Dave Pikul of DEC to discuss the property. During one or more of these meetings, the issue of PRP status of the prior owner and the earlier 1997 site investigation was discussed. At the time, I gather that the EPMI report had not been released and Skinner Corporation refused to release the report. Robert Erwin was able to get a draft copy of the report and this was forwarded to DEC.

I am told that the LP has incurred approximately \$70,000--\$90,000 in response costs. I do not have an accounting or documentation of such costs. Most of these costs have been for site investigation rather than remediation.<sup>3</sup> Some of the costs for the BGES 2005

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<sup>3</sup> Costs of site investigation preparatory to site remediation qualify as CERCLA § 107(a) response costs where these are consistent with the National Contingency Plan. Alaska presumably follows this rule.



JENNIFER CURRIE, ESQ., ALASKA DEPT. OF LAW  
Re: Fourth Avenue Gambell LP Site Contamination.

investigation qualify as remediation because contaminated soils were excavated, removed and disposed with DEC approval. Also UST's were removed any fluids remaining therein were disposed of. On information and belief, the 1997 site investigation cost around \$25,000 of which the LP contributed \$5,000.

Maney's understanding is that DEC is not formally requesting corrective action from the LP, i.e. further site investigation or remediation, until the State of Alaska has an opportunity to meaningfully evaluate PRP status of Skinner Corporation, Northern Commercial Company, NC Machinery, Inc., or related entities. I seek confirmation of this situation. Alternatively, I would appreciate any information regarding DEC's intentions to undertake corrective action of its own.

As with construction activity generally in Alaska, subsurface site investigation of soils or groundwaters is constrained by climate and seasonal conditions. If DEC looks to additional field work being performed this year, the LP would like to be timely informed so BGES may undertake the work before freeze up (~ Nov. 1).

F. *Other PRP's under Alaska's Hazardous Substances Law.*

The limited information compiled thus far indicates that contamination occurred on the property years before the LP ever came into title. Candidate owners or operators under Alaska's hazardous substances law include the dry cleaning businesses, Northern Commercial Co., NC Machinery, Inc., and Skinner Corporation.

The dry cleaning establishments went out of business more than thirty years ago and pursuing them would appear futile. Thus, a cost recovery action against either Peacock Cleaners, Inc. or C & K Sanitary Cleaners, Inc. would involve corporations presumably dissolved some thirty years ago. Even assuming a prima facie case of operator liability, the corporate assets to satisfy a judgment for cost recovery have long since been liquidated. The lessor to the dry cleaners died, and her estate was probated by 1971.

The historical Northern Commercial Co. that existed prior to 1974 and owned or operated the NC Machinery facility on the site no longer exists as a going concern. Also, the historical NC Machinery Co. that operated a business on the property appears to have changed corporate ownership at least twice--first to Skinner Corporation, and second to Tractor & Equipment, Inc. The Alaskan successor to the ownership of Northern Commercial Co. prior to 1974 appears to be the Alaska Commercial Co. That entity is a going concern in Alaska.



The primary PRP which is a going concern, has deep pockets, and may have sufficient connections with historical ownership and/or operations on the property is the Skinner Corporation. The legal theory would be that Skinner succeeded to the PRS status of the businesses it acquired because it took on the role of owner or operator under hazardous substances law.<sup>4</sup> Additional information and records will need to be compiled in order to better understand Skinner's role with the prior businesses and the property in order to prove its PRP status. On behalf of Fourth Avenue Gambell, I would be glad to cooperate with your office towards this end.

In the absence of commencing a legal action, the LP will not be able to discover records and evidence from PRP's directly. Instead, such information will have to be gathered indirectly through public records searches, historical materials and other sources. For these reasons, Fourth Avenue Gambell recommends that DEC consider informal administrative inquiries with Skinner Corporation, NC Machinery, Inc., and Northern Commercial Co. to obtain the desired information.

Aside from the issue of successor corporate liability, Skinner Corporation may have some exposure for its handling of known contamination on the property under Alaska's hazardous substances law. Available correspondence between Robert Erwin, NC Machinery, and later the Skinner Corporation, suggests the prior owner deliberately sought to suppress any disclosure of site contamination to the State of Alaska. The record is clear that Skinner refused to release the jointly funded 1997 site investigation to the LP for several years.

The correspondence also indicates that the Skinner Corporation vigorously asserts the security interest exemption under Alaska hazardous substances law. In this regard, Skinner apparently believes it had no duty of disclosure or clean-up of releases while it held the note and deed of trust on the property. However, one of the provisions of Alaska's law requires persons who seek immunity from liability for response costs to nonetheless "beg[in] operations to commence and clean up the hazardous substance." AS 46.03.822(b)(2)(B).

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<sup>4</sup> See generally *United States v. Bestfoods*, 524 U.S. 51 (1998) (addresses role of state corporations law in ascertaining CERCLA liability between corporate parent and subsidiary); *CERCLA Liability of Parent, Subsidiary and Successor Corporations*, 34 Am. Jur. POF 3d 387 (1995); Hyson, John, "Section 107(a) Liability and State Corporate Law," in PRIVATE COST RECOVERY ACTIONS UNDER CERCLA 49-61 (2003).



This provision may operate somewhat differently from CERCLA's counterpart.<sup>5</sup>

I characterize the quoted language in Alaska hazardous substances law as a "good Samaritan" or "volunteer" provision in the sense that DEC requires otherwise innocent parties to commence site investigation (or clean up). Based upon my experience with the FDIC fifteen years ago, I can definitely state that DEC expected holders of security interests in contaminated real estate collateral to "commence and clean up the hazardous substance" even though they might eventually be adjudicated not to be liable as a matter of law. Therefore, the same status should apply to the Skinner Corporation.

\* \* \* \*

Through this correspondence, Fourth Avenue Gambell does not admit any liability regarding the release of regulated contaminants on its property. Nor shall this letter be construed as an offer of compromise of any disputed liability. This correspondence is submitted for the limited purpose of evaluating existing information and rendering the

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<sup>5</sup> The corresponding provision in CERCLA applies to PRP's asserting the third party defense, including innocent purchasers. See CERCLA § 107(b)(3), 42 U.S.C. § 9607(b)(3). Sub-paragraph (3) to CERCLA § 107(b) includes two requirements, one of which states the PRP must have "exercised due care with respect to the hazardous substance concerned" in order to effectively prove the third party defense to liability. See, e.g.,:

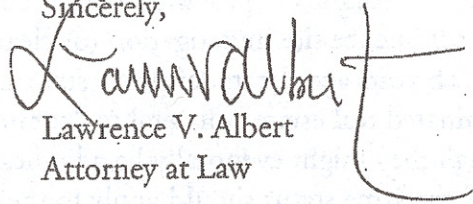
*Westfarm Assoc. Limited Partnership v. Washington Suburban Sanitary Comm'n*, 66 F.3d 669, 682-83 (4<sup>th</sup> Cir. 1995) (sanitary district aware of PCE contamination in its sewer pipes, that pipes were cracked, contamination leaked, and took no steps to improve the situation); *Kerr McGee Chemical v. Lefton Iron & Metal Co.*, 14 F.3d 321, 325 &n.3 (7<sup>th</sup> Cir. 1994) (due care not established when defendant took no affirmative measures to clean site); *United States v. A & N Cleaners & Launderers, Inc.* 788 F.Supp. 1317, 1328-29 (S.D.N.Y. 1992), on later proceedings, 854 F.Supp. 229, 242-43 (S.D.N.Y. 1994) (county health dept. conducted soils borings on property; county suspected dry cleaning solvents were source of contamination; media reported ground water contamination in area of the property; yet owner failed to take any affirmative steps for approximately 10 years thereafter); cf. *American National Bank & Trust Co. v. Harcros Chemicals Co.*, 997 F.Supp. 994, 998 n.3, 1002 (N.D. Ill. 1998) ("two site" case with fact questions on summary judgment; notwithstanding that third party defendant Weyerhaeuser had remediated its own property, court found it had not "attempted to ascertain the nature or degree of threat posed by hazardous substances in Canal D").



JENNIFER CURRIE, ESQ., ALASKA DEPT. OF LAW  
Re: Fourth Avenue Gambell LP Site Contamination.

contaminated property marketable pursuant to Alaska hazardous substances law. On behalf of the LP, I look forward to working with the Alaska Dept. of Law and Environmental Conservation for these stated purposes.

Sincerely,



Lawrence V. Albert  
Attorney at Law

encls

cc: Paul Maney, Alaskan Real Estate (for LP)

David Pikul, Alaska Dept. Environmental Conservation  
(w/o encls)

LAW OFFICES

## SHORT CRESSMAN & BURGESS PLLC

JOHN P. AHLERS  
DAVID E. BRESKIN  
KERRY S. BUCKLIN  
LESLIE C. CLARK  
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PAUL R. CRESSMAN, JR.  
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DANIEL R. JOHNSON  
CLAUDIA KILBREATH  
JANET S. KIM

999 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98104-4088

FAX: (206) 340-8856

(206) 682-3333

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ROBERT A. STEWART \*  
JOHN D. SULLIVAN  
PAUL R. WILLETT  
LISA A. WOLFARD

\* OF COUNSEL

September 14, 2005

Robert C. Erwin  
Law Offices of Robert C. Irwin LLC  
733 West Fourth Avenue, Suite 304  
Anchorage, AK 99501

**RECEIVED**

SEP 19 2005

DEPT. OF ENVIRONMENTAL  
CONSERVATION

Re: *Fourth Avenue Gambell Limited Partnership*

Dear Mr. Erwin:

We received and reviewed your June 17 and July 25, 2005 letters concerning the Fourth Avenue and Gambell property in Anchorage, Alaska (the "Property"). Skinner Corporation requested that we respond to your letters and specifically to the unfounded assertions of Skinner Corporation's ownership of the Property and purported reporting obligations under Alaska law.

As a preliminary matter, your letters of June 17 and July 25, 2005 do not accurately describe the ownership and operational history of the Property. Contrary to your June 17, 2005 letter, Skinner Corporation never owned or operated the Property. Skinner Corporation did not sell the Property to the Fourth Avenue Gambell Limited Partnership in 2004. As you are well aware, Fourth Avenue Gambell Limited Partnership purchased the Property from NC Machinery, Inc. in May, 1979. As part of the 1979 sale of the Property, NC Machinery took back a note and deed of trust thereby becoming a secured creditor holding only indicia of ownership in the Property as a security interest. Not until the early 1990s, did your client inform NC Machinery, Inc. that a potential environmental issue existed at the Property. Your client raised this potential environmental issue as an offset to its failure to make payments under the note and deed of trust.

In 1994, NC Machinery, Inc. was dissolved and the note and deed of trust were assigned to Skinner Corporation. As part of the continuing efforts to protect its security interest in the Property and to work out your client's default under the note, Skinner Corporation commissioned an environmental investigation of the Property. It did not,



Robert Erwin  
September 14, 2005  
Page 2

however, at any time fall within the definition of an owner, operator or possessor of the Property which would trigger any reporting obligation under applicable Alaska law. In particular, contrary to your statements to the ADEC, Skinner Corporation does not, and did not have at any time, any reporting obligation under applicable Alaska statutes and regulations AS 46.03.755 and 18 AAC 7500.

With respect to your client's receipt of the 1997 environmental investigation report, your statements to ADEC intimating that Skinner Corporation somehow improperly failed to disclose environmental conditions at the Property are absolutely false. As set forth in the February 5, 1998 letter from Michael O'Connell of Stoel Rives to you, we specifically requested that you confirm in writing your client's desire to have a copy of the report. Our files do not indicate any such written response to Mr. O'Connell's request. Furthermore, the insinuations you made to ADEC are further undermined by your own past correspondence in this matter. Your July 26, 1993 letter to NC Machinery indicated that your client had knowledge of a release to the environment at the Property more than 12 years ago. Your October 13, 1997 letter states that your client had, at that time, information concerning a leak of hydraulic fluid into the soils at the Property.

Most significantly, your May 6, 1997 letter specifically requested that Skinner Corporation conduct the investigation so that your clients would not be in possession of any information requiring disclosure to ADEC. For your, and ADEC's convenience, I have enclosed copies of your relevant letters. It is clear that your statements regarding Skinner Corporation's obligations to report environmental conditions at the Property are completely at odds with the actual facts and circumstances of the ownership, operation and control of the Property and, most poignantly, your client's long-standing knowledge of the release of oil and other hazardous substances at the Property.

Your statement that Skinner Corporation "sold" the Property to FGLP in 2004 is, like your allegations of reporting violations, absolutely false. As you know, in 2004 you filed a quiet title action on behalf of FGLP to clear title of the outstanding note and deed of trust from your client's 1979 purchase of the Property. Contrary to your assertions that Skinner Corporation owned or otherwise operated the Property, the allegations of your Quiet Title Complaint, which you signed, specifically state that FGLP has had "sole ownership and control" over the Property since 1979. A copy of your complaint is enclosed. Given the inability to recover on the note and deed of trust due to the passage of time, Skinner Corporation accommodated your request to reconvey the security interest it held in the Property rather than proceed with the quiet title action. Skinner Corporation did not "sell" the Property to your clients in 2004 – it merely released its security interest.



Robert Erwin  
September 14, 2005  
Page 3

Your letters also allege that Skinner Corporation is somehow liable as a potentially responsible party under Alaska Statute 46.03.822. As set forth above, Skinner Corporation never owned or operated the Property and clearly falls outside the definition of an owner or operator under Alaska Statute 46.03.826(8)(B). Skinner Corporation only held a security interest in the Property to secure your client's obligation to pay under the 1979 note. The secured creditor position of Skinner Corporation does not subject it to potential liability under the Alaska statutes. See, AS 46.03.826(8)(B); and *Parks Hiway Enterprises, LLC v. Cem Leasing Inc., et al.*, 995 P.2d 657 (S. Ct. Alaska 2000).

Finally, pursuant to your written request, enclosed is the December 1997 EPMI Site Characterization and Subsurface Investigation Report for the Property. Any reporting obligation arising from the information disclosed in this document is your client's and your client's obligation alone. If your client is only now attending to environmental issues on the Property it has known of since at least 1993 and that it has owned and exercised "exclusive control over" since 1979, we suggest your client refrain from its inaccurate portrayal of Skinner Corporation's security interest in the Property and acknowledge that any reporting obligations and remedial obligations rest squarely with them, not Skinner Corporation.

If you have any questions concerning Skinner Corporation's relationship to the Property, please contact me.

Very truly yours,

SHORT CRESSMAN & BURGESS PLLC

  
John T. Houlihan, Jr.

JJH:jko  
Enclosures

cc: David J. Pikul, Alaska DEC w/Encl. ✓  
555 Cordova Street, Anchorage 99501  
Skinner Corporation w/Encl.



ROBERT C. ERWIN

A PROFESSIONAL CORPORATION  
1400 WEST BENSON BOULEVARD, SUITE 575  
ANCHORAGE, ALASKA 99503-3690  
TELEPHONE (907) 276-3125  
FACSIMILE (907) 276-4125

RECEIVED

MAY 13 1997

STOEL RIVES

May 6, 1997

Richard A. Du Bey  
Stoel Rives LLP  
One Union Square  
600 University Street, Suite 3600  
Seattle, Washington 98101-3197

Re: Fourth Avenue Gambell Limited Partnership  
Paul L. Maney, General Partner  
Our File: MAPA-01

Dear Mr. Du Bey:

After my discussions with Paul Maney and his discussion with his Associates, it appears that there are only a limited number of options open to the Fourth Avenue Gambell Limited Partnership.

Initially, it should be noted that the property does not produce the income required in any clean up effort. Further, the Limited Partnership has paid Five Thousand Dollars (\$5,000.00) in a preliminary environmental survey in 1992 and Twelve Thousand Dollars (\$12,000.00) in attorney fees to attempt to get Skinner Corporation (NC Machinery) to accept the idea that some action was necessary.

The suggestion that they now pay one-half (1/2) of a proposed Twenty Thousand Dollar (\$20,000.00) to obtain an accurate estimate of the cost of environmental clean up goes down a little hard. Therefore the Limited Partnership offers to pay Five Thousand Dollars (\$5,000.00) toward such cost and notes that this evens the cost of both parties at Fifteen Thousand Dollars (\$15,000.00).

The Fourth Avenue Gambell Limited Partnership is worried that the excavation at the site will uncover several underground tanks as well

Richard A. Du Bey  
May 6, 1997  
Page 2

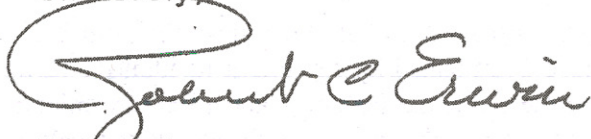
as contaminated soil which will require extensive monetary expenditures which it does not have.

It is agreed that any method to sell the property as is should be explored to return some value to the parties. There are no real estate ventures in the Anchorage area which buy property and then clean it up.

There is a further problem created by opening the site with the Alaska Department of Environmental Conservation which we wish to avoid. The work can be undertaken by the Skinner Corporation without civil or criminal disclosure penalties associated with prompt disclosure of environmental problems. The mortgage interest of Skinner Corporation provides sufficient legal interest to investigate the property without introducing an element that the investigation should have been done sooner. The owner does not get a similar benefit of the doubt.

It is the position of the Limited Partnership that the expenses of clean up (\$15,000.00) be applied to the purchase along with any other costs paid by the Limited Partnership for environmental remediation, etc. Further, if the property is sold for less than market value because of environmental pollution, that value should also be used to reduce the purchase price.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert C. Erwin". The signature is written in dark ink and is positioned above the printed name.

Robert C. Erwin

RCE:iw

cc: Paul L. Maney



# STOEL RIVES LLP

ATTORNEYS

ONE UNION SQUARE  
600 UNIVERSITY STREET, SUITE 3600  
SEATTLE, WASHINGTON 98101-3197  
Phone (206) 624-0900 Fax (206) 386-7500  
TDD (206) 628-6202  
Internet: www.stoel.com

April 2, 1997

RICHARD A. DU BEY

*Direct Dial*

(206) 386-7595

email radubey@stoel.com

## VIA FACSIMILE & FIRST-CLASS MAIL

Mr. Robert C. Erwin  
Erwin & Smith  
1400 W. Benson Boulevard, Suite 575  
Anchorage, AK 99503-3690

**Re: Fourth Avenue Gambell Limited Partnership  
Paul L. Maney, General Partner  
Your File: MAPA-01**

Dear Mr. Erwin:

Thank you for taking the time to discuss the status of the property purchased by Fourth Avenue Gambell from the Northern Commercial Company, Inc. ("NC"), commonly known as Lots 8A, 9, 10, 11 and 12 of Block 26-A, in Anchorage, Alaska (the "Property"). As counsel to the Skinner Corporation, successor-in-interest to NC, my purpose was to advise you of our interest in working together to minimize the risk of any environmental liability and to maximize the economic value of from the Property.

This letter confirms the Skinner Corporation's interest in working with Fourth Avenue Gambell to accomplish these objectives. I have been asked by my client to identify how we may manage environmental risk and realize value from the Property and to communicate my findings to you. I expect to be in a position to discuss this matter with you next week and ask that you confirm your availability next Thursday, April 10, at either 1:00 p.m. or 3:00 p.m. Pacific Standard Time to discuss this matter.

Thank you for your attention. I look forward to speaking with you next week.

Sincerely,



Richard A. Du Bey

RAD:cfz

cc: Debbie Sokvitne

SEA2-81712.1 19746-0006

SEATTLE

PORTLAND

VANCOUVER, WA

BOISE

SALT LAKE CITY

WASHINGTON, D.C.



SKINNER CORPORATION

RECEIVED

Date Received

JUL 26 2004

Copy to Client

Calendar & Ticker

Route Thru: *RL*

to

File No. *MANP 02*

July 27, 2004

Gail Buhler  
Pacific NW Title of Alaska  
3201 C Street Suite 110  
Anchorage, Alaska 99503

Re: Assignment of Deed of Trust  
Deed of Reconveyance and Substitution of Trustee

Dear Gail:

Per our conversation of last week, please file a courtesy recording of the enclosed Assignment of Deed of Trust and Deed of Reconveyance and Substitution of Trustee. The Assignment of Deed should be recorded first. Enclosed is the Consent of Shareholder in lieu of Special Meeting of Northern Commercial Company changing the name from Northern Commercial Company to SC Distribution Co.

Please call me if you have any questions, or need additional information. You can reach me at (206) 623-6486 on Tuesdays and Thursdays, 9:00 AM to 5:00 PM.

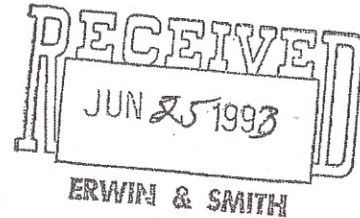
Sincerely,

Victoria Childs  
Treasurer

cc: Robert C. Erwin  
Erwin & Erwin, LLC



June 23, 1993



Mr. Robert C. Irwin  
Irwin & Smith  
1400 West Benson Blvd., Suite 575  
Anchorage, AK 99503-3690

RE: Fourth Avenue Gambell - A Limited Partnership  
Paul L. Maney, General Partner

Dear Mr. Irwin:

N C Machinery Company has received and considered your letters dated March 12, 1993 and May 7, 1993, and I am writing to advise you of N C's response. First, I believe it is important to review the history of N C's relationship with The Fourth Avenue Gambell limited partnership and Paul Maney, its general partner (collectively "Maney").

On May 24, 1979, Maney signed a Promissory Note in N C's favor, in the amount of \$375,000.00. This Note is secured by a Deed of Trust on the Fourth Avenue Gambell property. Since May 24, 1985, Maney has been in default on his obligation under the Note, although he has made periodic payments of interest only since that time. There is currently an outstanding principal balance on the Note of \$316,176.97. Beginning last fall, N C initiated discussions with Maney to address the indebtedness and to determine whether there were alternatives to foreclosing N C's interest in the property.

On March 12, 1993, N C was advised for the first time of potential environmental problems on the property. You have indicated that the question of environmental contamination first surfaced in connection with Maney's efforts to obtain third party financing for the property in order to pay off the indebtedness to N C. Because N C shares Maney's interest in satisfying his obligations to N C, N C is willing to assist in the environmental assessment of the property on the terms outlined in this letter.

Before setting out the details of N C's proposals, it is important for you to understand that N C is not admitting and expressly denies responsibility for any environmental problems existing on the property. Maney has had exclusive ownership, possession and control of the property since March 9, 1979, and is solely responsible for any releases of hazardous substances or other environmental problems which now exist or which occurred during Maney's ownership of the



Mr. Robert C. Irwin

Page 2

June 23, 1993

property. N C's willingness to participate in resolving potential environmental problems is expressly conditioned on Maney's agreement to the conditions outlined in this letter. With that understanding, N C proposes the following alternatives for Maney's consideration:

1. Payment in Full. It is unclear to N C whether Maney has obtained either a conditional offer to purchase the property from a third party or conditional approval for third party financing to pay off the indebtedness to N C. Your correspondence suggests that Maney has been pursuing these options, but that environmental assessment and cleanup may be conditions precedent to closing of a sale or loan. If there is a conditional sales contract in existence and if its terms are acceptable to N C, N C proposes that Maney assign all rights to the contract to N C. In exchange, N C would agree to pay the full costs of a Level II environmental assessment by an environmental consultant of N C's choosing and necessary cleanup costs for releases or contamination occurring during N C's ownership of the property. If the assessment indicated that environmental contamination or releases were caused by Maney or occurred during his ownership of the property, Maney would remain responsible for cleanup costs relating to such events.

Alternatively, if Maney has obtained loan approval from a third party lender, conditioned only upon environmental assessment and cleanup, and N C obtains a written commitment from the lender that the proceeds from such loan are sufficient to and would in fact be applied to pay Maney's obligations to N C in full at closing, N C would similarly be willing to pay for a Level II assessment and cleanup on the terms as outlined above.

2. Reconveyance of Property. If Option 1 is not feasible, N C proposes alternatively that Maney simply deed the property back to N C in full satisfaction of the outstanding indebtedness. N C would then proceed to have a Level II assessment performed at N C's expense, and each party would be responsible for cleanup costs attributable to environmental problems occurring during their respective ownership periods.

After you and your client have had a chance to review N C's proposals, we suggest that a conference call might be the best way to review outstanding issues and determine how to proceed. If we are able to reach an agreement, we will draft a final agreement to outline the parties' respective rights and obligations. This letter is intended only as a general outline of N C's proposals and not as a binding offer. N C's willingness to proceed with any of the alternatives outlined above is expressly contingent upon execution of a final written agreement



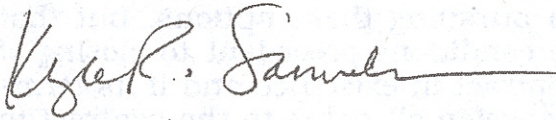
Mr. Robert Irwin  
Page 3  
June 23, 1993

satisfactory to both parties. You should also understand that, by entering into these discussions, N C is not waiving its rights to proceed with an action to enforce the note and foreclose on the property if it determines at any time that Maney is either unwilling or unable to meet N C's requirements.

We look forward to hearing from you.

Very truly yours,

N C Machinery Co.



Kyle R. Samuels  
Attorney

cc: John Medina  
Tom Sparks  
Lynn Du Bey



July 24, 2001

9-024-01279-3

Juanita Lefever  
3052 Brittany Place  
Anchorage, Alaska 99504

Dear Ms. Lefever

**RECEIVED**

JUL 25 2001

**ADEC STORAGE  
TANK PROGRAM  
FAIRBANKS**

**Re: FOURTH AND INGRA SITE, ANCHORAGE, ALASKA**

We received the July 20, 2001 Alaska Department of Environmental Conservation (ADEC) letter which provided their review comments on AMEC's April 2001 "Additional Site Characterization Report, Fourth and Ingra, Anchorage, Alaska" report. Although we have no formal contract with you, we felt it appropriate to notify you of the following, which may help proceed with site work.

- Three wells will need to be decommissioned on Lot 3, Block 27A: DP-2, DP-3, and DP-4. The details about their construction and location can be found in the April report described above.
- Two wells were left in place during the February 2001 field effort that *may* meet ADEC's requirement for two permanent wells on the Alleva property, DP-11 and DP-12. Their location would need to be evaluated.

We offered in our April 23, 2001 letter to be of continued service to you in pursuing site closure, and indicated that at your request AMEC would prepare a proposal for further work. This offer still stands and we would appreciate the opportunity to be of assistance to you. However, it may be more cost effective for you to hire an Anchorage-based environmental consulting firm to perform system decommissioning and groundwater monitoring as requested by the ADEC, as AMEC would need to mobilize from Fairbanks for each monitoring event. Our office's value may be in providing historical reports to such a consultant.

It has been a pleasure to be of service to you on this project. If you have any questions or concerns regarding this letter, please call me at 479-7586.

Sincerely,

**AMEC Earth & Environmental, Inc.**

Patricia A. Pettine  
Project Manager

Y:\Anchorage\1279.03\Year 2001 Add'l Site Characterization\Client\ltr-addressADECJul01Comments.doc

AMEC Earth & Environmental, Inc.  
3504 Industrial Avenue, Suite 5  
Fairbanks, Alaska  
USA 99701  
Tel +1 (907) 479-7586  
Fax +1 (907) 479-0193

[www.amec.com](http://www.amec.com)







Atch: Site Plan

C: Bret Von Gemmingen  
Lynne Bush, ADEC  
Mike Mooney, ADEC  
Teresa Boston, ADEC  
Steve Bainbridge, ADEC





## Bainbridge, Steve

---

**From:** Bush, Lynne  
**Sent:** Wednesday, June 20, 2001 3:28 PM  
**To:** Pingree, Stephanie; Bainbridge, Steve  
**Subject:** Devil's Advocate re: 4th & Ingra

Why not continue long-term monitoring only, with no active remediation required? What value will a risk assessment or the 10-X rule provide, in the long run, that long-term monitoring alone will not? Enquiring minds...

Talk with you both on Monday at 11:00.

-----Original Message-----

**From:** Pingree, Stephanie  
**Sent:** Wednesday, June 20, 2001 2:40 PM  
**To:** Bainbridge, Steve; Bush, Lynne  
**Cc:** Pingree, Stephanie  
**Subject:** 4th & Ingra

Lynn and Steve,

I thought I would send you some of my initial thoughts before our meeting next week. I have read through the Additional Site Characterization report (April, 2000) and have focused my review on section 4.0 Conclusions and Recommendations. It appears the risk management option presented is to go through a 350 determination to receive a cleanup level of ten times Table C for groundwater. All groundwater levels are below ten times the Table C values. If this approach fails one of the options proposed is to perform a risk assessment. The problem is that groundwater contamination extends off the property boundary above Table C cleanup levels.

A question that comes up is what are the advantages of a risk assessment versus a 10 times rule for groundwater extending off-site. When you meet the ten times rule and a 350 determination can be made, I am not sure a risk assessment would buy you much more. Is the groundwater a current or future drinking water source? If the answer is no, under both a site-specific groundwater risk assessment or applying the ten times rule, institutional controls may be required to ensure groundwater will not be used as a drinking water source and that groundwater cleanup levels that have not met Table C values will not migrate off-site (in this case the site would include both parcels of property).

If a 350 determination can not be made then the groundwater is assumed to be a drinking water source (current or future). If this is the case, the exposure parameters could be investigated under a risk assessment. If the site is residential land use, there is very little flexibility for exposure parameters and the cleanup levels would be about the same for GRO and DRO as the Table C values. For benzene, the Table C value is based on an MCL which is actually higher than the risk based level so the cleanup level could actually be lower than Table C for benzene under method four. If another land use is proposed at the site a risk assessment may be more applicable. Regardless, an IC may be required to ensure groundwater does not migrate off-site above Table C values.

Any IC chosen with a risk assessment or 10 times rule requires consultation with each land owner affected. Also, if applying the ten times rule consultation with the affected landowners and public is required. Whereas, in a risk assessment the regulations do not state specifically that consultation needs to occur but it seems to be inferred in the public involvement guidance.

Just some of my initial thoughts - we can talk about this and any other issues more next Monday. Talk to you then,  
-Stephanie





# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION

### Division of Spill Prevention and Response Storage Tank Program

TONY KNOWLES, GOVERNOR

555 Cordova Street  
Anchorage, Alaska 99501  
Phone: (907) 269-7526  
Fax: (907) 269-7507

<http://www.state.ak.us/dec/home.htm>

July 20, 2001

**RECEIVED**

JUL 23 2001

**ADEC STORAGE  
TANK PROGRAM  
FAIRBANKS**

Mrs. Juanita LeFever  
3052 Brittany Place  
Anchorage, Alaska 99501

**Subject: Review of Fourth and Ingra Additional Site Characterization Report**  
901 4<sup>th</sup> Avenue, Anchorage, Alaska  
File #L55.79 Facility ID #2747

Reckey #90 21 00 131 02

- Lot 4, Block 27A, Event ID #0149; and
- Lot 3, Block 27A, Event ID #2761

Dear Mrs. LeFever;

On April 9, 2001, the Alaska Department of Environmental Conservation Storage Tank Program (Department) received a copy of the *Additional Site Characterization* report, prepared by AMEC, detailing activities undertaken to perform additional site characterization associated with a release at your site. Twelve temporary wells were installed on this property (Lot 4, Block 27A), an adjacent property (Lot 3, Block 27A), and the Alleva property to the north. Results indicate that the plume extends off-site under Third Avenue and Mr. Ron Alleva's property. The compounds of concern that currently exceed groundwater cleanup levels are benzene, gasoline range organics, diesel range organics and lead. Of these exceedances, none of the concentrations are greater than ten times the allowable cleanup levels. In addition, the contaminants of concern have been identified, the potential exposure routes and exposure levels have been determined, soil contamination levels and distribution have been ascertained by direct investigation and free-phase petroleum product at this site has been addressed to the Department's satisfaction.

Five of the twelve wells (DP-1 through DP-5) were installed on Lot 3, Block 27A, the adjacent parcel of land to the east of the contaminated site in question. None of the analytical results from samples collected from these wells exceed groundwater cleanup levels and no further remedial action is required for this property. A work plan to properly decommission the remaining wells on this property should be prepared and submitted to the Department for review and approval. When the Department receives notification of proper decommissioning, site closure will be granted for Lot 3, Block 27A, subject to the usual consideration that if new information is discovered in the future the Department may require additional investigation and/or corrective action. This lot has been given a unique Event ID, #2761, which should be used when referring to this site in future correspondence. The facility, file and reckey numbers will remain the same for both sites.

In lieu of a risk assessment to address closure of the 901 4<sup>th</sup> Avenue site, the Department recommends instituting a long-term groundwater monitoring program to verify that the concentrations and dimensions of the groundwater plume are increasing, have achieved steady state or are declining. A work plan for this purpose should be prepared and submitted to the Department for review and approval by no later than

*Healthy People, Healthy Environment*



July 12, 2001

August 3, 2001. Analytical tests should be limited to the known contaminants of concern and the work plan should address proper decommissioning of any wells not deemed necessary for this task. If you and your consultant recommend decommissioning the remediation system at this time, please include this in your work plan.

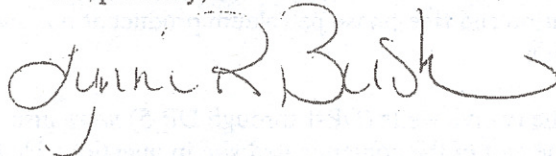
The Department recommends retaining, at a minimum, monitoring well MW-11 for long-term monitoring purposes. For the purpose of delineating and tracking the contaminant plume, at least two permanent wells should be installed on the Alleva property. One well should be installed in the vicinity of DP-9 and a second monitoring well installed in the most likely down-plume location from DP-9 where contamination is at or below cleanup levels. Permanent monitoring wells in the vicinity of DP-11 and DP-12 may prove valuable, but are not required. Please note, if long term monitoring indicates that the groundwater plume is neither steady state nor decreasing, additional monitoring, site investigation, groundwater modeling and/or corrective action may be required in the future.

The report summarizing the approved activities in the work plan should be submitted to the Department by no later than October 31, 2001. This report should include groundwater monitoring results and make an initial determination of the trends of the groundwater plume concentration and dimensions. It should recommend a schedule for the monitoring, evaluation and reporting of groundwater contamination trends, as revised by data collected during site activities and review of historical sampling events. Details of monitoring well and remediation system decommissioning should also be included, especially for Lot 3, Block 27A.

To summarize, no further active remediation is required by the Department at this time. Long term monitoring to determine if the concentration and/or dimensions of the groundwater plume are increasing, at steady state or decreasing is necessary and requires the installation of a minimum of two new monitoring wells. The remediation system and the monitoring wells not necessary for long term monitoring should be properly decommissioned, if you choose to do so at this time. A work plan and schedule for these tasks should be prepared and submitted to the Department by no later than August 3, 2001 with a follow-up report to be submitted by no later than October 31, 2001.

If you have any questions or comments, please do not hesitate to contact me at 269-7526.

Respectfully,



Lynne R. Bush  
Project Manager

cc: Patty Pettine, AMEC  
Bret von Gemmigen  
Ron Alleva  
Michael Mooney, ADEC  
Teresa Boston, ADEC  
Steve Bainbridge, ADEC

*Healthy People, Healthy Environment*



# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION CONTAMINATED SITES PROGRAM

SARAH PALIN, GOVERNOR

555 Cordova Street  
Anchorage, AK 99501-2617  
Phone: (907) 269-7503  
Fax: (907) 269-7649  
<http://www.dec.state.ak.us/>

File No.: 2100.38.434

January 24, 2007

Paul Maney  
Alaskan Real Estate, Inc.  
1343 G Street  
Anchorage, Alaska 99501

Re: Alaska Real Estate Parking Lot, 717 East 4<sup>th</sup> Avenue, Anchorage, Alaska  
Lots 8A, 10, 11 & 12 Block 26A, East Addition Subdivision, Anchorage  
RecKey No. 2004210926001

Dear Mr. Maney:

The Contaminated Sites Program (CSP) within the Department of Environmental Conservation (DEC) has reviewed your consultant BGES, Inc.'s work plan titled "Phase II Environmental Site Assessment, Monitoring Well Installation, Lots 8A, 10, 11 and 12 Block 26A, East Addition, Anchorage, Alaska" dated September 15, 2005. The plan was submitted via e-mail to CSP on January 16, 2007. While the plan is dated 2005, we have no record of it being submitted previously to DEC – although Mr. Dave Pikul of CSP recalls discussing the proposal in 2005 with Mr. Bob Braunstein of BGES. Regardless, we have reviewed the plan and approve it with conditions described below. The plan proposes installation of one up-gradient monitoring well on the subject lots and collection of soil and groundwater data from the boring/well. On January 16, 2007, Mr. Braunstein clarified that three soil samples will be collected from the boring as described on page 3 of the plan and will be sent to the laboratory for EPA Methodology 8260 analysis if detections are determined using on site field screening instrument (i.e., PID). In addition, groundwater elevations will be determined for each of the existing monitoring wells and the new proposed well on site, and soil samples will be collected and combined from five shallow locations on the property.

Our file shows that the subject properties were used for a variety of businesses including two cleaners (Peacock and C&K Sanitary Cleaners) and apparent automobile repair work. All buildings on the subject lots were demolished by 1979, and the lots are currently vacant other than used for parking and an Alaska Communications Systems antenna tower in the southeast portion of the properties.

As previously discussed with you/Bob Braunstein of BGES, CSP is concerned with the elevated levels of contaminants, including the chlorinated solvent tetrachloroethylene (PCE), previously reported to DEC in soil and groundwater which are above applicable cleanup levels specified in 18 AAC 75.341 and 18 AAC 75.345, respectively.



Thus, while we are approving the plan, we are requesting further characterization work be performed at the site in addition to what is proposed in the September 15, 2005 plan. Previous cleanup work activities, including assessment, has been limited to on your property and both soil and groundwater data indicates that these media may be contaminated off your subject properties as well as a result of contamination emanating from your property. Our file shows that first environmental work at the site was performed in 1993 when a Phase I assessment was performed by EnviroAmerica, Incorporated. Sampling was first performed by Environmental Project Management, Inc. (EPMI) who performed a limited investigation in 1997 that included installation of three monitoring wells and excavation of three trenches in a drum/septic tank area near the former dry cleaning facility(ies) where four empty buried drums were found that indicated that the contents were to be used for dry cleaning operations, detection of underground storage tanks (USTs) at the site, and sampling that showed volatile organic compounds (VOCs) in soil and groundwater (e.g., in soil PCE to 4.5 mg/kg, cis 1,2-dichloroethylene (cis DCE) up to 0.8 mg/kg, toluene up to 9.0 mg/kg, 1,3,5 trimethylbenzene up to 49.5 mg/kg, and 1,2,4 trimethylbenzene up to 178.0 mg/kg) and in groundwater (i.e., PCE up to 4.25 mg/L), and lead in soil (up to 996 mg/kg).<sup>1</sup> While not above current cleanup levels, residual range organics (RRO) was detected up to 4,830 mg/kg and diesel range organics (DRO) up to 223 mg/kg in soil. Groundwater elevation findings from the 1997 EPMI report indicates groundwater flows to the northeast and at about a 0.0125 ft./ft. gradient.

Between 1997 and when BGES began further work in 2004, it appears no environmental work was performed at the site. In August 2004, BGES removed two heating fuel oil USTs and two USTs that contained hydraulic fluid, removed five hydraulic lifts, removed about 7,660 pounds of solid waste, and investigated soil by sampling six test pits. Those sampling results showed that from test pits 1-3 PCE exceeded 18 AAC 75.345 cleanup levels with a maximum detection of 4.09 mg/kg (test pits 4-6 were not tested for VOCs), DRO up to 398 mg/kg, and RRO up to 3,230 mg/kg. Other samples from the areas below the USTs showed DRO up to 509 mg/kg (e.g., above the 250 mg/kg DRO 18 AAC 75.341 cleanup level) and RRO up to 3,670 mg/kg. Samples analyzed for gasoline range organics or BTEX constituents were non detect or below applicable cleanup levels. In October 2004, BGES sampled MW-1 for VOCs and it showed 2.28 mg/L PCE. Chemical parameters collected in the field in 2004 indicates that the contaminated aquifer is aerobic, e.g., the oxidation-reduction potential is about 300 millivolts (the report noted that dissolved oxygen (DO) was about 15.0 g/L but that would appear to be in error as the correct measurement unit is mg/L but at 15.0 mg/L the groundwater would be viewed as supersaturated and that is doubtful. It is more likely that the groundwater DO in the vicinity would be in the range of 5-12 mg/L).

In March and April 2005, BGES implemented its approved workplan to perform a drinking water well survey, advance three borings and complete as monitoring wells, survey the monitoring

<sup>1</sup> These contaminants and others stated in the EPMI report are above current and applicable 18 AAC 75 cleanup levels. In soil, the migration to groundwater cleanup levels for PCE is 0.03 mg/kg, for cis DCE is 0.2 mg/kg, toluene is 5.4 mg/kg, 1,2,4 trimethylbenzene is 95.2 mg/kg, 1,3,5 trimethylbenzene is 25.0 mg/kg, n-butylbenzene calculated level is 15.0 mg/kg (detected up to 19.8 mg/kg), sec-butylbenzene calculated level is 12.0 mg/kg (detected up to 15.6 mg/kg), and while not enough toxicological data is available to determine cleanup levels for p-isopropyltoluene (detected up to 102.0 mg/kg), the two most similar compounds we could use as a surrogate are n-propylbenzene (15.0 mg/kg cleanup level) and isopropylbenzene (51.0 mg/kg cleanup level). (cleanup levels for the trimethylbenzene chemicals are specified in DEC's Technical Memorandum 01-007 dated November 24, 2003). For lead, in a residential scenario the cleanup level is 400 mg/kg and in an industrial scenario it is 1,000 mg/kg but levels remaining above 400 mg/kg a institutional control would be placed on the property. In groundwater, the cleanup level for PCE is 0.005 mg/L.



wells, and sample soil and groundwater. Their May 2005 report of this work showed the following: while five drinking water wells were located through a file search within ¼ mile of the site, none were observed during a subsequent field reconnaissance; PCE exceeded applicable 18 AAC 75.341 and 18 AAC 75.345 cleanup levels in soil and groundwater, respectively (PCE was detected in soil throughout all three of the borings to the water table ranging from 0.542 to 79.5 mg/kg with the greatest concentrations between 18 ft. below ground surface and the water table; PCE was detected in groundwater in the three new and existing MW-1 from 0.372 to 1.790 mg/L); groundwater flowed to the northeast at a gradient of about 0.01 ft./ft.; and chemical parameters from groundwater were similar to that reported in 2004 which indicates that the aquifer is still aerobic.

As I understand, BGES was unaware of the locations of the other two monitor wells reported in the 1997 EPMI report during the 2005 investigation. BGES became aware of the EPMI report later after the work had been completed.

As noted above, the September 15, 2005 plan is approved provided:

- 1) Duplicate soil and groundwater samples will be collected on at least a 10% frequency.
- 2) All monitoring wells will be sampled including the four known existing wells for VOCs using EPA Method 8260. The last the monitor wells (MW 1, 2, 3 and 4) were sampled was in spring 2005. The status on the two wells reported in the 1997 EMPI report (i.e., MWs 2 and 3) need to be determined during this investigation and if viable, also sampled.
- 3) Reports are to be submitted to DEC within 60 days of completion of each field sampling event.
- 4) Perform an evaluation whether vapors pose a risk at this site. As we understand, while the lot is vacant, it is used as a parking area. This information needs to be included in the CSM for the site as described below.

While the plan proposes to only analyze soil and groundwater samples for VOCs using EPA Methodology 8260, you may want to sample for additional chemicals as petroleum and metals have been detected at the site, some of which are known to be above applicable cleanup levels.

As noted above, DEC is requesting a work plan to better characterize the site both horizontally and vertically. Please submit a work plan by March 30, 2007 to better characterize the soil and groundwater at this site. Please include in the assessment work plan additional soil monitoring well installations both on and off the subject property to delineate the contaminant plume. The work plan needs to ensure that sampling will include all contaminants of concern. Petroleum, metals and chlorinated solvents have been previously identified at the site. It also appears that little or no natural attenuation of the PCE is occurring with little or no findings of PCE breakdown products such as trichloroethylene (TCE) or cis 1,2-dichloroethylene; however, this is not surprising as the groundwater aquifer appears to be highly aerobic in nature. The later March 30th deadline should provide you with time to evaluate findings from the 2005 approved work plan and prepare the work plan under this request.



For all work plans and reports submitted for a contaminated site, please ensure that that information is provided that demonstrates that the individuals that performed the work (field and preparing/signing the report) are qualified third parties per 18 AAC 75 and 18 AAC 78 (see our recent posting on qualified persons on our webpage at: <http://www.dec.state.ak.us/spar/csp/qp.asp>).

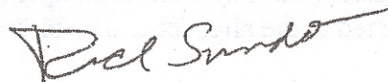
DEC requests that you submit a Conceptual Site Model (CSM) for this site. Please see our webpage at <http://www.dec.state.ak.us/spar/guidance.htm#risk> for more information regarding the CSM, which also includes a scoping form template on the CSM, to assist your consultant in addressing this request. Please submit the CSM when you submit the assessment report. A CSM must be submitted prior to any consideration for closure of a site.

For future sampling reports, please ensure that the reports contain adequate information to meet DEC's expectations in data quality. CSP recently posted a technical memorandum on DEC's Internet site at <http://www.dec.state.ak.us/spar/guidance.htm#csp> and a Laboratory Data Review Checklist at [http://www.dec.state.ak.us/spar/csp/guidance/lab\\_checklist.pdf](http://www.dec.state.ak.us/spar/csp/guidance/lab_checklist.pdf). Please note that a Laboratory Data Review Checklist must be submitted with the analytical data.

Alaska Statute 46.03.760, AS 46.03.822 and 46.08.070 establish cost recovery procedures for certain costs, including oversight activities, incurred by the State in responding to pollution incidents. If you are determined to be a responsible or liable party, DEC may bill you at a later date for our expenditures associated with this pollution incident. Expenses for which we may seek reimbursement include: staff time associated with general or technical assistance; work plan review; project oversight; general project management; legal services; interest; travel; equipment and supplies; and any contracting costs. Pursuant to AS 46.08.075, the State may also file liens against all property owned by a person who is responsible or liable for State expenditures.

If you have questions regarding this letter, please contact me at (907) 269-7578. Please be aware that I have replaced Dave Pikul as the DEC Project Manager overseeing this pollution incident.

Sincerely,



Rich Sundet  
Environmental Specialist

cc: Bob Braunstein, BGES, Eagle River  
Jenn Currie, Dept. of Law / Anchorage  
Lawrence Albert, Anchorage



# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN,  
GOVERNOR

*Environmental*  
1031 WEST 4<sup>th</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5274  
FAX: (907) 278-7022

February 11, 2008

Lawrence V. Albert  
P.O. Box 200934  
Anchorage, Alaska 99520

Dear Mr. Albert:

This letter is in response to your letter of July 2006 and your e-mail of December 4, 2007 to Representative John Harris regarding the Fourth Avenue property in which your client Fourth Avenue Gambell Limited Partnership (Gambell) has been named as a party liable under AS 46.03.822 for environmental cleanup costs (a copy of the e-mail is attached).

I wanted to address a number of issues raised in the letter. First, you state that you have not received a response to your letter of July 21, 2006. While you may not have received a written response, we have certainly spoken on the telephone on a number of occasions since July 21, 2006, and discussed the issues raised both in that letter and subsequent letters. Your letter of September 15, 2006 acknowledges this fact, by beginning the letter with the phrase "[t]his letter follows our telephone conversation of Thursday September 14, 2006." In addition, I informed you that, in January 17, 2007, DEC sent a responsible party determination letter to Skinner Corporation related to the property. I have attached a copy of that letter as well as Skinner's response.

With respect to the history at the site, especially with respect to liability, your letter neglected to mention a number of important facts. The following is a history of the ownership of the site as well as your client's knowledge of the contamination on the site as indicated by our files.

- 1979 All lots purchased by Gambell from Northern Commercial Corp. (DeL)(NC)
- Early 90's According to Skinner, Gambell informed NC Machinery that a "potential environmental issue" existed at the Property. Skinner says Gambell raised this as an offset to its failure to make payments under the note and deed of trust.
- 1992 Gambell stopped paying on the Deed of Trust and Deed of Trust Note on 9/8/92 when "they discovered that the property contained previously undisclosed contamination" - stated by Gambell in Quiet Title Action filed in court. Gambell made no payments made after this. DEC was not informed of the existence of contamination at the property.



- 1993 Letter from Gambell's Attorney to Skinner – states that “[t]he property now appears to be contaminated by toxic substances”). Letter says Gambell is going forward with testing, requests documents related to NC building location and tank uses. Phase I environmental site assessment conducted. DEC was not informed of contamination at the property.
- 1994 According to Skinner, “NC Machinery, Inc.” dissolved and Gambell's note and deed of trust assigned to Skinner.
- 1997 Skinner performed an environmental investigation - In 2005 ADEC received (from Skinner Corp) a copy of a report dating back to 1997 that identified the contamination. DEC also obtained a letter written in 1997 by the prior attorney for Gambell. The attorney was trying to convince Skinner to perform environmental investigation and, as a part of that letter, states that if Gambell conducts the investigation and contamination exists, it would have to report it to ADEC, a situation “which [they] wish to avoid.” He states that Skinner can perform the investigation, and not inform ADEC without “civil or criminal disclosure penalties associated with the prompt disclosure of environmental problems.” DEC was never informed about the contamination on the property.
- 2004 DEC informed of contamination on the property.

**A. Gambell is a liable party under Alaska law**

Gambell is a liable party under Alaska statutes. It is an owner or operator of a facility from which there is a release, or threatened release that causes the incurrence of response costs, of a hazardous substance. AS 46.03.822(a)(2). As such, Gambell is strictly liable for damages, for the costs of response, containment, removal, or remedial action incurred by the state. AS 46.03.822(a). If response actions occurring at the site are not satisfactory to the department, it may assume the lead role in the investigation and cleanup efforts, in which case, the department will seek reimbursement of its costs from liable parties. AS 46.09.020; AS 46.08.070.

Even though Gambell is clearly a liable party at the site, the department conducted extensive research and reviewed a large volume of corporate information in an attempt to issue additional notices of responsibility related to the site. In January 2007, the department issued a responsible party letter to Skinner Corporation (see attached).



**B. Gambell does not qualify as an innocent purchaser under Alaska law**

Under Alaska statutes, a person otherwise liable is relieved from liability under AS 46.03.822 if the person proves that the release was solely a result of a third party and that within a reasonable time after the act occurred, the person discovered the release and began operations to contain and clean up the hazardous substance. AS 46.03.822(b)(1)(b) and (b)(2). There is evidence that Gambell was aware of the contamination at the site as early as 1992. Indeed, it stopped making payment on its note for the property based entirely on the existence of contamination on the property. Gambell performed a Phase I site investigation in 1993. It did not inform DEC of the existence of the contamination, and it did not initiate cleanup at that time.

**C. Gambell can seek contribution from other potentially liable parties**

Pursuant to 46.03.822(j), Gambell is entitled to seek contribution from any other person who is liable under the statute during or after a civil action or after the issuance of a potential liability determination by the department. The department has issued a potential liability determination to Skinner Corporation and therefore, Gambell is currently entitled to seek contribution for its cleanup costs from Skinner. 822(j) was specifically amended in 2006 to allow potentially responsible parties to seek contribution based upon the department's letters, so that lawsuits by the state were unnecessary as a precursor to contribution.

With respect to the issue raised in your e-mail as to the constitutionality of strict liability laws being imposed retroactively, federal courts have unanimously rejected both arguments that the application of CERCLA's strict liability provisions to existing contamination violates due process protections of the United States Constitution and that the application of CERCLA provisions constitute an unconstitutional taking. See e.g. U.S. v. Conservation Chemical Co., 619 F.Supp. 162 (W.D. Mo. 1985); U.S. v. Shaner, 1992 WL 154572 (E.D. Pa. 1992); U.S. v. Miami Drum Services, Inc., 1986 WL 15327 (S.D. Fla. 1986); U.S. v. Iron Mountain Mines, Inc., 812 F.Supp. 1528 (E.D. Cal. 1992). Similarly, it has always been the case under common law that a property owner may not maintain a public nuisance that threatens public health, safety and the environment. Alaska's mini-CERCLA statute (modeled after federal law) was enacted to ensure that those with economic ties to a piece of contaminated property pay for the costs of cleaning up that property as opposed to having these costs borne by the public. Consequently, AS 46.03.822(b)(2) requires even an innocent landowner to undertake a cleanup upon discovery of a release of hazardous substances on their property.

The dicta that you cite in a footnote in Federal Deposit Ins. Corp. v. Laidlaw Transit, Inc., 21 P.3d 344 (Alaska 2001) is a discussion of the FDIC and its status as a potentially responsible party in light of the fact that it held indicia of ownership primarily to protect its security interest in the site. The Court initially notes that it is not deciding this issue. It then cites to division in federal law interpreting the CERCLA equivalent provision. It then discusses the definition of "owner" under Alaska law. It is the State's position that this dicta does not make a determination that current owners, even those who have not caused the release, are not liable parties under Alaska law. AS 46.03.822 specifically sets out categories of liable parties. These categories include both "the owner and the operator of a vessel or facilities, from which there is a release, or a threatened release that



Lawrence V. Albert

February 11, 2008

Page 4 of 4

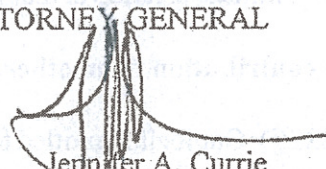
causes the incurrence of response costs, of a hazardous substance" and "any person who at the time of the disposal of any hazardous substances owned or operated any facility..." AS 42.03.822(a)(2) and (3). These are two separate categories of liable parties and must be read as two distinct categories, not as two provisions describing one category of liable party.

I thought we had discussed this previously, but in the event we haven't, I would be happy to discuss providing you with copies of historic research we have performed related to the site.

Sincerely,

TALIS J. COLBERG  
ATTORNEY GENERAL

By:



Jennifer A. Currie

Assistant Attorney General

JAC/gyb

Attachments as noted

cc: Representative John Harris  
Attorney General Talis Colberg (via e-mail)